

: BEFORE THE

: HOWARD COUNTY

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 08-005S

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On March 23, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Antoy LLC, t/a Antwerpen Toyota, for a variance to erect a 24'1"(H) x 10' (W), 57'3" square, freestanding identification sign 36 feet from the Route 108 right-of-way ("ROW") rather than the 57'4" setback required in relation to the total sign area and the 48'2" setback from Route 108 required in relation to the sign height, and to locate this same sign 150 feet from the MD 32 ROW, in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Robert Vogel testified on behalf of the Petitioner. No one appeared in opposition to the petition.

## FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following

facts:

1. The generally rectangular subject property is located on the northwest corner of the intersection of MD. 108 and the Md. 32 on-ramp. It is located in the 5<sup>th</sup> Election District and referenced on Tax Map 34 as Parcel 365/PAR B (the "Site"). The Site has a street address of 12420 Auto Drive.
2. The Site is about 1.20 acres in size and is used to store the Petitioner's vehicles. These vehicles are parked around the Site's perimeter and in an interior portion.
3. Vicinal Properties. The properties to the north, west, and east are zoned B-2. To the Site's west is the two-story Antwerpen Toyota dealership structure (also 12420 Auto Drive). To the north is a two-story Walgreens store. To the east, across MD 108 is the 5<sup>th</sup> District Volunteer Fire Department. To the South, the RR (Rural: Residential) zoned site is improved by the Route 32 off-ramp to Route 108.
4. The Petitioner is requesting a variance to erect a 24'1"(H) x 10' (W), 57'3" square freestanding identification sign 36 feet from the Route 108 right-of-way ("ROW"), rather than the 57'4" setback required in relation to the total sign area and the 48'2" setback from Route 108 required in relation to the sign height, and to locate this same sign 150 feet from the MD 32 ROW. The proposed sign would replace the existing sign, which is situated 36 feet from the MD 108 ROW and 150 feet from the MD 32 ROW.
5. The top of the proposed doubled-faced fiberglass Toyota gray sign would contain an illuminated Toyota icon with the word "TOYOTA" below. The illuminated Scion icon would appear below "TOYOTA," separated by a gray "swoosh" (according to the signage variance plan).

6. According to the sign variance plan, the total signage area permitted is 1060.9 square feet, based on the dealership building frontage and area, and the total signage area, including the proposed sign, is 719.76 square feet.

7. Robert Vogel introduced into evidence several photographs depicting the intersection where the Site is located. Mr. Vogel testified that the high grade of the Walgreens site, as shown in Petitioner's Exhibit 1, blocks the visibility of the current sign. Exhibit 2 depicts the large northbound Route 32 directional sign blocking the existing sign. Exhibit 3, a photograph looking south along MD 108 near Auto Drive, depicts a line of utility poles, signs, and trees blocking the existing sign. He also stated that the Scion icon would still be partially blocked.

8. The speed limit on MD 108 is 35 miles per hour, 50 miles per hour on MD 32. The speed limit on Auto Drive is 25 miles per hour. It is my experience that the actual travel speed is, on average, somewhat higher.

### **CONCLUSIONS OF LAW**

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

**1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The Site has frontage at the juncture of two state roads having a dependency on nonlocal use. Additionally, the average travel speed along these roads impedes motorists' ability to see a conforming sign in a safe manner. These conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1)

**2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The grading around the Walgreens site seriously interferes with the visibility of the proposed sign. The presence of signs, trees, utility poles, and state highway direction signs along MD Routes 108 and near the Route 32 ramp impede motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

**3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.**

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

**4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.**

The proposed sign will be constructed in the same location as the existing sign. There being no evidence of adverse affects from the existing sign on the use of adjacent properties, nor any

evidence of a dangerous traffic condition resulting from the existing sign, I conclude the proposed sign is unlikely to produce adverse effects on the use or development of adjacent properties.

**5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.**

The proposed sign is a reasonable use and Mr. Vogel testified that while the Scion icon will still be partially blocked, the Petitioner is not requesting a larger, more visible sign. I therefore conclude the sign is the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

**6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

**ORDER**

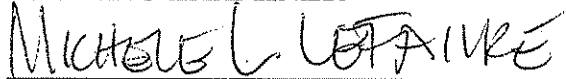
Based upon the foregoing, it is this **25<sup>th</sup> day of March 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Antoy LLC, t/a Antwerpen Toyota for a variance to erect a 24'1"(H) x 10' (W), 57'3" square, freestanding identification sign 36 feet from the Route 108 right-of-way and to locate this same sign 150 feet from the MD 32 ROW, in a B-2 Zoning District, is hereby **GRANTED;**

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The sign shall not be erected, altered, or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 3/26/09

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.